



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 29, 1998

Mr. Laurence E. Boyd  
Attorney at Law  
P.O. Box 269  
Angleton, Texas 77516-0269

OR98-1095

Dear Mr. Boyd:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0728 (1998). Your request for reconsideration was assigned ID# 115689.

The City of Manvel (the "city"), which you represent, received two open records requests for all records pertaining to the termination of the city's chief of police, any citizen complaints filed against the chief, and all internal affairs investigations regarding any of the city's police officers. In Open Records Letter No. 98-0728 (199), this office concluded in part that the city could not withhold the requested information under section 552.103 of the Government Code. In your request for reconsideration you explain that the city received notice of a lawsuit filed against the city dated March 10, 1998, six days before we issued Open Records Letter No. 98-0728 (1998).

You ask this office to reconsider our previous ruling based on the changed circumstances presented by the filed lawsuit. We agree that the petition raises new issues with respect to your arguments regarding litigation under section 552.103. Furthermore, we believe that you have timely notified this office of the changed circumstances as outlined in Open Records Decision No. 638 (1996). Therefore, we address your new arguments regarding the pending litigation.

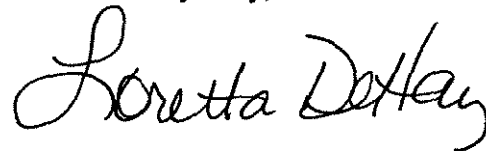
Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the governing body is or may be a party. You contend that all of the records at issue are excepted from public disclosure pursuant to section 552.103 because the records directly relate to the termination of the former police chief, who has filed a "whistle blower" lawsuit against the city as a result of the termination. You state that the police chief was discharged because of an "inordinate number of personnel problems in the Police Department." Upon consideration of your new arguments and review of the

information submitted, we conclude that you have demonstrated that litigation is pending and the requested information relates to the litigation. Therefore, much of the information may be withheld under section 552.103(a). We note, however, that basic information regarding investigation of alleged criminal actions may not be withheld under section 552.103. See Open Records Decision No. 597 (1991).<sup>1</sup>

In reaching this conclusion, however, we assume that the opposing party to the pending litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Open Records Letter No. 98-0728 (1998) is overruled to the extent it conflicts with this ruling. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID# 115689

Enclosures: Summary of Open Records Decision No. 127 (1976)  
Submitted documents

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<sup>1</sup>You ask this office to review your markings for information that you have determined meets the requirements set out in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). We have examined the information that you have released in response to the requests and generally agree that you have released basic information regarding the allegations of criminal conduct. We have also enclosed a summary of the types of information that this office considers to be basic information pursuant to the *Houston Chronicle* case and Open Records Decision No. 127 (1975). As we have determined that the city may withhold the remaining information under section 552.103, we do not address your other arguments for withholding additional information under common-law privacy.

cc: Ms. Kim Tilley  
The Alvin Sun-Advertiser  
P.O. Box 1407  
Alvin, Texas 77512-1407  
(w/o enclosures)